MEMORANDUM ON THE OBJECTS OF THE COMPANIES BILL, 2008

1. BACKGROUND

1.1. In 2004, the Department of Trade and Industry ("the dti") published a policy paper, Company law for the 21st century, which promised the development of a "clear, facilitating, predictable and consistently enforced law" to provide "a protective and fertile environment for economic activity".

The policy paper proposed "that company law should promote the competitiveness and development of the South African economy" by—

1.1.1 Encouraging entrepreneurship and enterprise development, and consequently, employment opportunities by—
   (a) simplifying the procedures for forming companies; and
   (b) reducing the costs associated with the formalities of forming a company and maintaining its existence.

1.1.2 Promoting innovation and investment in the South African markets and companies by providing for—
   (a) flexibility in the design and organisation of companies; and
   (b) a predictable and effective regulatory environment.

1.1.3 Promoting the efficiency of companies and their management.

1.1.4 Encouraging transparency and high standards of corporate governance.

1.1.5 Making company law compatible and harmonious with best practice jurisdictions internationally.

The policy paper promised an "overall review of company law" to develop a "legal framework based on the principles reflected in the Companies Act, 1973 (Act No. 61 of 1973), the Close Corporations Act, 1984 (Act No. 69 of 1884), and the common law". The review "would be broadly consultative", drawing on the experience of existing company law institutions, professional expertise within the Republic, and advisers on "best practice internationally and the possibilities for their adaptation to the South African context".

Over the ensuing three years, the dti convened and engaged with a reference group of South African practitioners, academics and other experts, consulted with NEDLAC, and sought the advice of a small panel of international experts drawn from South Africa's major trading and investment partners, as well as commonwealth jurisdictions, which share many of our company law traditions, before publishing a draft bill for public comment in February 2007.

1.2 At every stage, the consultation process endorsed the five-point statement of economic growth objectives, as set out above. In addition, the process generated specific goal statements related to each of those five objectives, best reflected in the following summary of points set out in the report of the NEDLAC consultations:

1.2.1. Simplification
   (a) The law should provide for a company structure that reflects the characteristics of close corporations, as one of the available options.
   (b) The law should establish a simple and easily maintained regime for non-profit companies.
   (c) Co-operatives and partnerships should not be addressed in the reformed company law.

1.2.2 Flexibility
   (a) Company law should provide for "an appropriate diversity of corporate structures".
   (b) The distinction between listed and unlisted companies should be retained.

1.2.3 Corporate efficiency
   (a) Company law should shift from a capital maintenance regime based on par value, to one based on solvency and liquidity.
   (b) There should be clarification of board structures and director responsibilities, duties and liabilities.
(c) There should be a remedy to avoid locking in minority shareholders in inefficient companies.
(d) The mergers and takeovers regime should be reformed so that the law facilitates the creation of business combinations.
(e) The judicial management system for dealing with failing companies should be replaced by a more effective business rescue system.

1.2.4 Transparency
(a) Company law should ensure the proper recognition of director accountability, and appropriate participation of other stakeholders.
(b) Public announcements, information and prospectuses should be subject to similar standards for truth and accuracy.
(c) The law should protect shareholder rights, advance shareholder activism, and provide enhanced protections for minority shareholders.
(d) Minimum accounting standards should be required for annual reports.

1.2.5 Predictable regulation
(a) Company law sanctions should be decriminalised where possible.
(b) Company law should remove or reduce opportunities for regulatory arbitrage.
(c) Company law should be enforced through appropriate bodies and mechanisms, either existing or newly introduced.
(d) Company law should strike a careful balance between adequate disclosure, in the interests of transparency and over-regulation.

With those objectives and goals in mind, and drawing on the expertise offered through its consultations, the dti prepared a discussion draft of a proposed new Companies Act for South Africa, which was published for public comment after receiving cabinet approval in early 2007. As promised in the policy document in 2004—

"It is not the aim of the dti simply to write a new Act by unreasonably jettisoning the body of jurisprudence built up over more than a century. The objective of the review is to ensure that the new legislation is appropriate to the legal, economic and social context of South Africa as a constitutional democracy and open economy. Where current law meets these objectives, it should remain as part of company law."

The published draft elicited well over 100 written submissions from stakeholders, interest groups, and individuals, many of which offered extensive detailed motivations and proposals for reconsideration, reformulation and revision of the draft. In addition, the dti conducted meetings, workshops, discussions and conferences across the country to receive comments in a more informal manner.

All of the submissions received were tabulated and every issue raised or motivation or proposal for revision was noted, and each was systematically considered against the background of the relevant provision of the published draft, and in the context of the project’s policies and principles.

In general, the public comments supported the core principles and policies of the reform project, but questioned and challenged many of the legal instruments and provisions that had been proposed to give effect to those policies and principles. Responding to those challenges, the dti instructed the drafting team to reconsider and revise the bill as previously published in a manner that would continue to give effect to the policies directing the project, but address and accommodate the issues and concerns raised, in so far as practicable.
2. Overall plan for company legislation

The reform strategy set out in this Bill proposes the wholesale repeal and replacement of the Companies Act, 1973, with a new Companies Act. However, in accordance with the undertaking set out above from the policy document, the new Act will retain many of the provisions of the current law, which, on analysis, proved to meet the goal of being “appropriate to the legal, economic and social context of South Africa as a constitutional democracy and open economy”.

In addition, the Bill provides for the co-existence of the new Companies Act, 1973 and the Close Corporations Act, 1984 with amendments to the latter to harmonise the laws as far as practicable to avoid regulatory arbitrage. The dti believes that the regime in the new Companies Act for forming and maintaining small companies, which has drawn on the characteristics of the Close Corporations Act, is sufficiently streamlined and simplified as to render it unnecessary to retain the application of that Act for the formation of new corporations.

However, it is recognised that existing close corporations should be free to retain their current status until such time as their members may determine that it is in their interest to convert to a company. Therefore, the Bill provides for the indefinite continued existence of the Close Corporations Act, but provides for the closing of that Act as an avenue for incorporation of new entities, or for the conversion of companies into close corporations, as of the effective date of this Bill.

During the consultation process, the dti was made aware of proposals within the Department of Justice and Constitutional Development to develop uniform insolvency legislation which, if brought to fruition, would overlap and may conflict with the regime set out in the current Companies Act, 1973 for dealing with and winding-up insolvent companies. In order to avoid any future conflict, the Bill provides for transitional arrangements that will retain the current regime, as set out in Chapter 14 of the Companies Act, 1973 without alteration, on an interim basis until such time as any new uniform insolvency law may be enacted and brought into operation.

Finally, the draft incorporates the principles of the recent amendments made to the Companies Act, 1973, and introduces new provisions, as necessary, to ensure harmonisation with other legislation, notably, the Securities Services Act, 2004 (Act No. 36 of 2004) and the Auditing Profession Act, 2005 (Act No. 26 of 2005).

3. Institutional reform in Bill

The Bill proposes the establishment of one new institution, and the transformation of three existing company law entities, which together will provide for a more predictable and de-politicised regulatory and enforcement system.

Under the Companies Act, 1973 regulatory responsibility is variously assigned to the Minister, the Registrar, the Securities Regulation Panel (SRP), and most recently, the Financial Reporting Standards Council (FRSC). In practice, many of the functions of the Minister and the Registrar have long since been exercised by the Companies and Intellectual Property Registration Office (CIPRO), within the dti.

Chapter 8 of this Bill provides for the migration of CIPRO into a newly established organ of state, with significantly expanded functions and powers, to be known as the Companies and Intellectual Property Commission (“the Commission”). In particular, most of the administrative functions currently assigned to the Minister under the Companies Act, 1973, apart from the appointment of members of the institutions, and the making of regulations, are depoliticised and placed within the jurisdiction of the Commission, although the Minister retains the authority to issue policy directives to the Commission, and to require the Commission to conduct an investigation as set out in the Bill.

The Bill further proposes the transformation of the existing SRP into an independent organ of state, the Takeover Regulation Panel (“the Panel”), with powers similar to those currently vested in the SRP, although its current authority to prescribe rules are now be exercised in consultation with the Minister, who alone would have final authority to make regulations under the proposed Act.

The FRSC is re-established as an advisory committee to the Minister, with responsibilities to advise on regulations establishing financial reporting standards, which will govern the form, content and maintenance of companies’ financial records and statements.
Finally, the Bill provides for one new body, a Companies Tribunal ("the Tribunal"), which will be an independent organ of state, with a dual mandate—

(a) first, to serve as a forum for voluntary alternative dispute resolution in any matter arising under the Act; and

(b) second, to carry out reviews of administrative decisions made by the Commission on an optional basis. Those decisions of the Tribunal will be binding on the Commission, but not on the other party, which has a constitutional right of access to a court for further review.

As is the case under the Companies Act, 1973, the High Court remains the primary forum for resolution of disputes, interpretation and enforcement of the proposed Companies Act.

4. Scope and categorisation of companies

The Bill provides for two categories of companies, as follows:

(a) Non-profit companies, which are the successor to the current section 21 companies, and which are subject to—

(i) a varied application of the Act, as set out in section 10; and

(ii) a special set of fundamental rules, set out in Schedule 1, retaining the current principles concerning the objects of such companies, and restricting the distribution of any residual assets on dissolution, in addition to other matters unique to non-profit companies.

(b) For profit companies, which are recognised as being of one of the following types:

(i) Private companies, which are comparable to companies of the same status under the Companies Act, 1973;

(ii) personal liability companies, which are comparable to companies contemplated in section 53(b) of the Companies Act, 1973;

(iii) public companies, which are comparable to companies of the same status under the Companies Act, 1973; and

(iv) state-owned companies, which were often incorporated or registered under the Companies Act, 1973, but were not recognised in that Act as requiring separate legislative treatment in respect to certain matters to avoid conflict or overlap with other legislation specifically applicable to them, and not to companies in general.

In a further effort to create an appropriately flexible regime, a few provisions of the Bill make exceptions for companies that operate under the exceptional circumstances that—

(a) all of their shares are owned by related persons, which results in diminished need to protect minority shareholders; or

(b) all of the shareholders are directors, which results in a diminished need to seek shareholder approval for certain board actions.

The Bill retains the requirements of the Companies Act, 1973, for registration of external companies operating within the Republic, which are also required to have a registered office. In addition, the provisions regulating the public offering of securities within the Republic will apply with respect to the securities of any foreign company, whether or not it carries on activities within the Republic.

The transitional provisions set out in Schedule 5 provide for—

(a) the continuation of existing companies incorporated and registered in terms of the current Act, and provides for them to be governed henceforth in terms of the new proposed Act. Allowances are made for time for them to amend their Articles to conform to the requirements of the new Act; and

(b) the conversion of existing close corporations into companies under the proposed new Act.

5. Company formation, naming and dissolution

The Bill gives effect to the essential core principle that formation of a company is an action by persons in the exercise of their constitutional right to freedom of association combined with their common law right to freedom of contract. That being the case, the Bill reflects, in both its language and its substance, the principle that incorporation of a company is a right, rather than a privilege bestowed by the State. As such, it provides for incorporation as of right, places minimal requirements on the act of incorporation,
allows for maximum flexibility in the design and structure of the company, and significantly restricts the ambit of regulatory oversight on matters relating to company formation and design.

Chapter 2 of the Bill sets out the basic regulatory scheme generally applicable to all companies from incorporation to dissolution. Part B of that Chapter provides for a company to be incorporated by the adoption of a Memorandum of Incorporation, which is the sole governing document of the company. The Bill imposes certain specific requirements on the content of a Memorandum of Incorporation, as necessary to protect the interests of shareholders in the company, and provides a number of default rules, which companies may accept or alter as they wish to meet their needs and serve their interests. In addition, the Bill allows for companies to add to the required or default provision to address matters not addressed in the Bill itself, but every provision of every Memorandum of Incorporation must be consistent with the Bill, except to the extent that it expressly contemplates otherwise. In other words, a company cannot fundamentally “contract out” of the proposed Companies Act. This principle is reinforced by clause 6(1), which introduces a general “anti-avoidance” regime to company law.

For companies wishing to, the Bill provides for the simplest possible form of incorporation by use of a standard form of Memorandum of Incorporation, which permit the incorporators to accept the required provisions, and the default provisions with or without alteration.

This Bill retains the broad outlines of the existing regime for company names, in particular continuing the practice of name reservation and registration, with some significant alterations. In particular, name reservation will be available to protect one or more names, but it is no longer required. In addition, the Bill proposes reforming the criteria for acceptable names in a manner that seeks to give maximum effect to the constitutional right to freedom of expression. Specifically, the Bill restricts a company name only as far as necessary to—

(a) protect the public from misleading names which falsely imply an association that does not in fact exist;
(b) protect the interests of the owners of names and other forms of intellectual property from other persons passing themselves off, or coat-tailing, on the first person’s reputation and standing; and
(c) protect the society as a whole from names that would fall within the ambit of expression that does not enjoy constitutional protection because of its hateful or other negative nature.

Beyond those purposes, there will be no further administrative discretion to reject names, as is found in the Companies Act, 1973.

Transitional provisions allow for names registered or reserved under the current regime to continue to be so registered or reserved under the new Act.

As noted above, the winding-up of insolvent companies will remain as currently governed by Chapter 14 of the Companies Act, 1973 on an interim basis. Apart from that, Chapter 2 retains a number of the existing grounds for dissolving a company, adds additional grounds not found in the Companies Act, 1973, and more narrowly restricts the grounds on which the regulators may seek to have a company dissolved.

6. Accountability and transparency

In order to provide a flexible scheme that balances accountability and transparency, with a lightened regulatory burden, the Bill provides for certain common requirements of all companies, together with a more demanding disclosure and transparency regime, as set out in Chapter 3, to apply to—

(a) public companies, which always have a greater responsibility to a wider public; and
(b) certain private companies, which may have a greater responsibility to a wider public as a consequence of their significant social or economic impact.

In particular, all companies are required to—

(a) have a registered office, and maintain their records at that office, or at another location, notice of which has been given to the Commission;
(b) maintain certain categories of records for a standard minimum of seven years, or longer, if so required by another law;
(c) make specified records available to shareholders, in a manner that is harmonised with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
have a fixed financial year, which may be modified only within restrictions set out in clause 27;

(e) maintain accurate financial records, which must be kept in accordance with any prescribed standards, but those standards may vary for different categories of companies, and falsification of those records is an offence;

(f) produce any financial statements, or summary of such a statement, in a manner and form that satisfies prescribed financial reporting standards, which may vary for different categories of companies, but in any case must be consistent with International Financial Reporting Standards of the International Accounting Standards Board;

(g) stipulate on any financial statements or summary of any financial statements whether the statements have been audited, independently reviewed, or are unaudited, and the date of the statements, and the period to which they apply, as well identifying the name and professional designation, if any, of the person responsible for preparation of the statements;

(h) produce annual financial statements each year.

The annual financial statements of a public company must be audited, while the annual financial statements of other companies must either be audited, or subjected to an independent review, as contemplated in clause 30(2).

In addition, if a company’s annual financial statements are required to be audited, they must also be approved by the directors of the company, and must include a directors’ report, and detailed disclosure of information concerning the compensation, and other amounts of money paid to directors, as set out in clause 30(3) to (5).

Every company, and every external company conducting activities within the Republic must file an annual report, in the prescribed form, with the Commission, including with it a copy of the company’s annual financial statement, if it is required to have a financial statement audited.

Chapter 3 imposes additional accountability and transparency requirements on public companies, largely retaining the existing law with respect to the appointment of company secretaries, auditors, and audit committees.

Finally, the Bill significantly alters the current regime respecting use of the company’s name and inclusion of specified information on all of its publications. The Bill abolishes the highly prescriptive and largely unenforceable scheme of the Companies Act, 1973, and substitutes it with clause 32 which—

(a) requires that a company discloses its full name and registration to any person on demand;

(b) prohibits a company misstating its name or registration number in a manner that would be misleading or likely to deceive;

(c) prohibits any unauthorised person using the name of a company to convey the impression that the person is acting on behalf of the company; and

(d) prohibits any person using a form of name to create a false impression that the name is the name of a company.

In terms of the Bill a contravention of clause 32 is an offence.

7. Company finance

Chapter 2 Part D addresses the core issues of company finance, giving effect to the goals outlined above by creating a capital maintenance regime based on solvency and liquidity and abolishing the concept of par value shares and nominal value (although the transitional provisions continue any existing par value shares as such for so long as they are extant, and provide for promulgation of regulations to govern the transition of such shares to the new regime).

In addition, the interests of minority shareholders continue to be protected by requiring shareholder approval for share and option issues to directors and other specified persons, or financial assistance for share purchase, or any financial assistance to a director or related person.

Clause 43 replaces the existing, archaic provisions relating to specific forms of debenture, with proposals for a general scheme designed to protect the interests of holders of securities other than shares, without making unnecessary distinctions based on artificial categorisation of the debt instrument they hold.

Part E of Chapter 2 retains the existing scheme for registration and transfer of uncertificated securities as found in section 91A of the Companies Act, 1973.
Similarly, Chapter 4 presents a simplified and modernised scheme with respect to the primary and secondary offering of securities to the public, based on the principles of the Companies Act, 1973.

8. Company governance

Part F of Chapter 2 addresses all matters relating to company governance, introducing changes to enhance flexibility, while retaining much of the existing regime designed to promote transparency and accountability.

In particular, the Bill—
(a) introduces flexibility in the manner and form of shareholder meetings, the exercise of proxy rights, and the standards for adoption of ordinary and special resolutions;
(b) retains existing qualifications and disqualifications for directors, with some enhanced flexibility, particularly for very small companies where the sole shareholder may be the only director;
(c) explicitly recognises and provides for the use of alternate directors, directors who may be appointed by persons designated in a company’s Memorandum of Incorporation, and for ex officio directors, while requiring that a minimum of at least half of all directors of a company must be elected by the shareholders of the company; and
(d) in clause 71, provides a more certain and nuanced scheme for the removal of directors from office.

A major innovation of the draft is the introduction of a regime allowing for a court, on application, to declare a director either delinquent (and thus prohibited from being a director) or under probation (and restricted to serving as a director within the conditions of that probation). The core of the regime is set out in clause 162, as one of the remedies available to shareholders and other stakeholders to hold directors accountable.

Clause 76 introduces new law in the form of a codified regime of directors’ duties, which includes a fiduciary duty, and a duty of reasonable care. The provisions governing directors’ duties are supplemented by new provisions addressing conflict of interest (in clause 75, and directors’ liability (clause 77), and indemnities and insurance (clause 78).

9. Takeovers and fundamental transactions

Under Chapter 5, the transformed the Panel (currently the SRP) retains its status as the regulator of affected transactions and it is intended that the current Takeover Code will be re-enacted as a regulation, subject to any changes the Panel may advise.

The Chapter makes significant changes to the existing law governing the required notification of share purchases, and introduces a remedy for compulsory acquisition of minority shareholding in a takeover scenario, fulfilling one of the reform goals.

The regime for approval of transactions that fundamentally alter a company; the disposal of substantially all of its assets or undertaking, a scheme of arrangement, or a merger or amalgamation, is also significantly reformed, and is supported by a remedy of appraisal rights for dissenting minority shareholders.

In particular, such fundamental transactions will require court approval only if there was a significant minority (at least 15%) opposed to the transaction, or the court grants leave to a single shareholder on the grounds of procedural irregularity or a manifestly unfair result.

Finally, as implied above, the Bill introduces the concept of amalgamation of companies to provide flexibility and enhance efficiency in the economy.

10. Business rescue

In accordance with the reform objectives and specific goals, Chapter 6 replaces the existing regime of judicial administration of failing companies with a modern business rescue regime, largely self-administered by the company, under independent supervision within constraints set out in the Chapter, and subject to court intervention at any time on application by any of the stakeholders.

To ensure the integrity and effectiveness of supervisors contemplated in this Chapter, provision has been made for the Minister to designate a suitable association to regulate the functions of persons seeking to be appointed, or acting as supervisors. The Chapter
recognises the interests of shareholders, creditors and employees, and provides for their respective participation in the development and approval of a business rescue plan. Notably, the Chapter protects the interests of workers by—

(a) recognising them as creditors of the company with a voting interest to the extent of any unpaid remuneration before the commencement of the rescue process,

(b) requiring consultation with them in the development of the business rescue plan,

(c) permitting them an opportunity to address creditors before a vote on the plan, and

(d) according them, as a group, the right to buy out any dissenting creditor or shareholder who has voted against approving a rescue plan.

11. Remedies

As noted above, the High Court remains the principal forum for remedies in terms of the Bill. Chapter 7 establishes certain new general principles, including an extended right of standing to commence an action on behalf of an aggrieved person, and a regime to protect “whistle blowers” who disclose irregularities or contraventions of the Act, which has been formulated to harmonise with the protections already afforded employees under the Protected Disclosures Act, 2000 (Act No. 26 of 2000).

As well as retaining certain existing remedies, the Chapter introduces:

(a) A new general right to seek a declaratory order as to a shareholder’s rights, and seek an appropriate remedy;

(b) a right to apply to have a director declared delinquent or under probation, as noted above;

(c) a right for dissenting shareholders in a fundamental transaction to have their shares appraised and to be compensated for the fair value of those shares; and

(d) a codification and streamlining of the right to commence or pursue legal action in the name of the company, which replaces any common law derivative action.

12. Enforcement

In accordance with the objectives and goals, the proposed Act decriminalises company law. There are very few remaining offences, those arising out of falsification of records or documents, publishing of untrue or misleading information, or refusal to respond to a summons, give evidence, perjury, and similar matters relating to the administration of justice in terms of the Act. Any such offences must be referred by the Commission to the National Public Prosecutor for trial in the Magistrate’s Court.

Generally, the Act uses a system of administrative enforcement in place of criminal sanctions to ensure compliance with the Act. The Commission or Panel, may receive complaints from any stakeholder, or may initiate a complaint itself, or act on a matter as directed by the Minister. Following an investigation into a complaint, the Commission or Panel may—

(a) end the matter;

(b) urge the parties to attempt voluntary alternative resolution of their dispute;

(c) advise the complainant of any right they may have to seek a remedy in court;

(d) commence proceeding in a court on behalf of a complainant, if the complainant so requests;

(e) refer the matter to another regulator, if there is a possibility that the matter falls with their jurisdiction; or

(f) issue a compliance notice, but only in respect of a matter for which the complainant does not otherwise have a remedy in a court.

A compliance order may be issued against a company or against an individual if the individual was implicated in the contravention of the Act.

A person who has been issued a compliance notice may of course challenge it before the Companies Tribunal, and in court, but failing that, is obliged to satisfy the conditions of the notice. If they fail to do so, the Commission may either apply to a court for an administrative fine, or refer the failure to the National Prosecuting Authority as an offence.
In the case of a recidivist company that has failed to comply, been fined, and continues to contravene the Act, the Commission or Panel may apply to a court for an order dissolving the company.

Finally, to improve corporate accountability, the draft proposes that it will be an offence, punishable by a fine or up to 10 years imprisonment, for a person to sign or agree to a false or misleading financial statements or prospectus, or to be reckless in the conduct of a company’s business.

13. OTHER DEPARTMENTS AND BODIES CONSULTED

The following Regulatory authorities, government departments and agencies were consulted in the preparation of the Bill:

13.1 Regulatory Authorities:
- Companies & Intellectual Property Registration Office (CIPRO);
- Financial Services Board (FSB);
- Independent Regulatory Board for Auditors (IRBA);
- Johannesburg Securities Exchange (JSE) Ltd;
- South African Reserve Bank (SARB);
- South African Revenue Services (SARS);
- Securities Regulation Panel (SRP);
- Share Transactions Totally Electronic (STRATE);
- The Standing Advisory Committee on Company Law in South Africa (SACCL); and

13.2 Government Departments & Agencies:
- Department of Justice & Constitutional Development;
- Minister of Finance in the Republic of South Africa and the National Treasury Department;
- Department of Public Enterprises;
- Portfolio Committee on Trade & Industry of the National Parliament of South Africa;
- The Select Committee on Economic and Foreign Affairs of the National Council of Provinces of Parliament of South Africa;
- The National Economic Development and Labour Council (NEDLAC) of South Africa;
- Department of Public Service & Administration of the Republic of South Africa; and
- The Department of Communications of the Republic of South Africa.

14. FINANCIAL IMPLICATIONS FOR STATE

For the Companies Tribunal, an estimated budget of R17 million will have to be provided for in the first year and approximately R18 million in the following financial year. However, with regard to the reorganisation of CIPRO and the establishment of the Commission there are no financial implications envisaged for the fiscus since CIPRO has sufficient reserves to accommodate any financial requirements for the establishment of the Commission.

15. PARLIAMENTARY PROCEDURE

15.1 The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

15.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.